

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

RMD HOLDINGS, LTD.,

Employer/Appellant,

vs.

Case No. 2006-397-AE

WINSTON A. ELAM,

Claimant/Appellee,

and

STATE OF MICHIGAN,
DEPARTMENT OF LABOR
& ECONOMIC GROWTH,
UNEMPLOYMENT INSURANCE
AGENCY,

Appellee.

OPINION AND ORDER

This matter is before the Court on an appeal from an administrative decision granting unemployment compensation benefits.

I.

The record reflects that on May 27, 2003, Claimant had been hired as manager of the Employer's access controls department. It was Claimant's position that he had been discharged by his supervisor, Scott Keller ("Keller"), on January 28, 2005. On the other hand, the Employer argued that Claimant was terminated after he failed to show up for work after January 31, 2005. It was the Employer's contention that Claimant's conduct amounted to a voluntary quit.



2006-000397-
AE
00019386082
OPNIMGCC

Claimant applied for unemployment compensation benefits and his claim therefor resulted in an administrative hearing. On October 25, 2005, the Administrative Law Judge ("ALJ") issued a written decision finding that Claimant was not disqualified from receiving the subject benefits. Thereafter, the ALJ's ruling was affirmed by the Employment Security Board of Review.

On appeal, the Employer argues that Claimant failed to meet his burden of showing that he was entitled to the disputed benefits. Conversely, the Administrative Agency maintains that the Employer failed to rebut testimony showing that Claimant's supervisor discharged him for refusing an unethical order to renegotiate an existing contract.

II.

At the outset, the Court will set forth the applicable standard of review. In pertinent part, MCL 421.38 provides that:

(1) The circuit court...may review questions of fact and law on the record made before the referee and the board of review involved in a final order or decision of the board, and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record...

If there is substantial evidence in support of the administrative agency's decision, the reviewing court may not substitute its judgment for that of the agency. *Smith v Employment Security Comm*, 410 Mich 231, 256; 301 NW2d 285 (1981).

III.

The Court will next set forth the governing authority relating to unemployment compensation benefits.

In relevant part, MCL 421.29 states that:

(1) An individual is disqualified from receiving benefits if he or she:

(a) Left work voluntarily without good cause attributable to the employer or employing unit. An individual who left work is presumed to have left work voluntarily without good cause attributable to the employer or employing unit. An individual claiming benefits under this act has the burden of proof to establish that he or she left work involuntarily or for good cause that was attributable to the employer or employing unit...

(b) Was suspended or discharged for misconduct connected with the individual's work...

The term "voluntary" connotes that there was a choice between alternatives that an ordinary individual would find reasonable. *Clarke v North Detroit Gen Hosp*, 179 Mich App 511, 515-516; 446 NW2d 493 (1989). "Good cause" has been found where an employer's conduct would cause a reasonable, average, and otherwise qualified employee to give up his job. *Carswell v Share House, Inc*, 151 Mich App 392, 396; 390 NW2d 252 (1986).

Moreover, "misconduct" has been defined as:

...conduct evincing such wilful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer... *Carter v Employment Security Comm*, 364 Mich 538, 541; 111 NW2d 817 (1961).

IV.

After careful consideration, the Court is persuaded that the instant request for relief should be denied.

The evidence shows that on Claimant's last day on the job, he had a disagreement with his supervisor, Keller, about an existing contract. More specifically, Keller had ordered Claimant to renegotiate the contract so as to obtain terms that were more favorable to the Employer. According to Claimant, he was threatened with termination if he failed to do so.

Claimant believed that he was then discharged for failing to comply with a directive which he believed was unethical and detrimental to his reputation. He returned to work the next day to retrieve his personal items.

During the administrative hearing, the Employer failed to produce Keller as a witness. Instead, the Employer used the testimony of another individual, J. Zuehlke ("Zuehlke"), who had not been Claimant's supervisor. According to Zuehlke, Claimant had been fired after he failed to appear for work.

The evidence fails to show that Claimant's termination had been "voluntary" inasmuch as he had not been faced with a choice of reasonable alternatives. MCL 421.29(1)(a); *Clarke, supra*. In this regard, the Court opines that Claimant had to choose between damaging his reputation or forfeiting his employment, neither of which would generate a satisfactory outcome. Further, the Court is convinced that Claimant's refusal to engage in unethical conduct constituted "good cause" for his separation from employment. MCL 421.29(1)(a); *Carswell, supra*. Although the Employer contends that Claimant's failure to show up for work constituted "misconduct," the Employer failed to produce any concrete evidence in support of its position, especially since it declined to call Keller as a witness even though he was at the very heart of the controversy. MCL 421.29(1)(b); *Carter, supra*.

Accordingly, the Court cannot conclude that the administrative decision was contrary to law or was not supported by competent, material, and substantial evidence on the whole record. MCL 421.38(1).

V.

For the reasons set forth above, the instant appeal is DENIED. The administrative decision is AFFIRMED.

In compliance with MCR 2.602(A)(3), the Court finds that this decision resolves the last pending issue and closes the case.

IT IS SO ORDERED.

Dated:

DONALD G. MILLER
Circuit Court Judge

CC: Roger Tyson
Shannon N. Wood

DONALD G. MILLER
CIRCUIT JUDGE

MAY 30 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY:  Court Clerk